

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

KTJ 229,LLC,

Case Type: Other Civil

Plaintiff,

Court File No. \_\_\_\_\_

v.

✓ Jeff Towner, Chris Weiss, and Todd Poss,

Defendants.

**SUMMONS**

TO: THE ABOVE NAMED DEFENDANTS:

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that might affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at: Morrison Sund PLLC, 5125 County Road 101, Suite 200, Minnetonka, MN 55345.

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiffs' Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiffs should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiffs everything asked for in the Complaint. If you do not want to contest the claims stated in the complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

TIME 6:20  
 DATE 5/16/16  
 ADDRESS 3300 Highway 101, Suite 200  
 SERVED Jeff Towner  
 BY [Signature]  
 ADVANCED PRIVATE INVESTIGATIONS

STATE OF MINNESOTA

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KTJ 229, LLC,

Case Type: Other Civil

Plaintiff,

Court File No. \_\_\_\_\_

v.

Jeff Towner, Chris Weiss, and Todd Poss,

**COMPLAINT  
(Jury Trial Demanded)**

Defendants.

Plaintiff KTJ 229, LLC ("KTJ") for its complaint against Defendants Jeff Towner ("Towner"), Chris Weiss ("Weiss") and Todd Poss ("Poss") states and alleges the following:

**PARTIES**

1. KTJ is a Minnesota limited liability company with its principal place of business located at 400 Water Street, Suite 200, Excelsior, MN 55331.

2. Jeff Towner is an individual who is a resident of the State of Wisconsin and may be served at N6302 County Road DE, Bangor, WI 54614, or at 3300 Augusta Lane, Onalaska, WI 54650. Towner was an officer, director or owner of TCI Architects/Engineers/Contractor, Inc. ("TCI") at all relevant times herein.

3. Chris Weiss is an individual who is a resident of the State of Wisconsin and may be served at 228 Country Club Court, La Crosse, WI 54601. Weiss was an officer, director or owner of TCI at all relevant times herein.

4. Todd Poss is an individual who is a resident of the State of Wisconsin and may be served at 837 Tahoe Drive, Onalaska, WI 54650. Poss was the Chief Financial Officer of TCI at all relevant times herein.

5. The events giving rise to this action involve Towner, Weiss and Poss's transactions with KTJ that occurred within the State of Minnesota.

### **JURISDICTION AND VENUE**

6. Venue is appropriate in this Court pursuant to Minn. Stat. § 542.09.

7. The Court has personal jurisdiction over the parties pursuant to Minn. Stat. § 543.19 because Towner, Weiss and Poss, through their entity, TCI, transacted business with KTJ within the State of Minnesota, and committed acts of theft in the State of Wisconsin which caused injury to KTJ, a Minnesota entity, within the State of Minnesota.

### **FACTS**

8. KTJ owns certain real property located at 2195 Century Avenue South, Woodbury, MN 55125 (the "Property").

9. KTJ hired TCI as a general contractor pursuant to a Standard Form of Agreement Between Owner and Design-Builder dated April 25, 2014 ("Agreement"), to improve the Property with a senior housing complex known as the Woodbury Senior Living Project (the "Project")

10. On or about July 2, 2015, KTJ caused its lender, Union Bank and Trust, to disburse the sum of \$889,741.83 (the "Funds") to TCI as a progress payment on the Project, which funds were designated for the payment of subcontractor claims related to work on the Project.

11. TCI, through its officers and directors, failed and refused to pay the Funds to the subcontractors on the Project for whom such Funds were held in trust.

12. On or about July 10, 2015, TCI commenced an insolvency proceeding in the Circuit Court, La Crosse County, State of Wisconsin, Case No. 15-376, and obtained the appointment of a general receiver to liquidate TCI for the benefit of its creditors pursuant to Wisconsin Statute Chapter 128.

13. As a result of Towner, Weiss and Poss's misappropriation of KTJ's Funds, KTJ has been sued by mechanics' lien subcontractors in the Washington County District Court, Tenth Judicial District, State of Minnesota, Court File No. 82-CV-15-5268 (the "Action"), and has incurred and will continue to incur significant attorneys' fees and costs defending such action.

**COUNT I – Civil Theft, (W.S.A. § 779.02(5))**

14. KTJ restates the allegations of the preceding paragraphs and incorporates them herein by reference.

15. TCI served as the general contractor on the Project pursuant to the Agreement.

16. TCI received the Funds from KTJ for the improvement of the Project.

17. The Funds paid to TCI were trust funds intended to be held by TCI for the benefit of the various subcontractors who provided labor, skill, material or machinery to the Project.

18. Towner and Weiss, as owners of TCI, and Poss, as chief financial officer of TCI, intentionally used the Funds for purposes other than for payment of bona fide subcontractor claims for labor and materials on the Project.

19. Towner, Weiss and Poss used the KTJ Funds for purposes other than to pay subcontractors on the Project without KTJ's consent.

20. Towner, Weiss and Poss knew their use of the Funds was without KTJ's consent and contrary to the authority conveyed to TCI pursuant to the Agreement.

21. Towner, Weiss and Poss used the Funds with intent to convert it to their own use or the use of another.

22. Towner, Weiss and Poss caused TCI to misappropriate the Funds and used said Funds for purposes other than those for which the trust Funds were intended.

23. As a result of Towner, Weiss, and Poss's theft of the Funds, KTJ has been injured and has been caused to defend itself in the Action.

24. Pursuant to W.S.A. § 943.20 KTJ 229, LLC is entitled to treble damages from Towner, Weiss and Poss for civil theft by contractor.

WHEREFORE, Plaintiff KTJ 229, LLC prays the Court enter judgment against Defendants Jeff Towner, Chris Weiss and Todd Poss as follows:

1. Awarding judgment in favor of KTJ 229, LLC and against Defendants Jeff Towner, Chris Weiss, and Todd Poss, jointly and severally, in the amount of \$889,741.83 pursuant to W.S.A. § 779.02(5), plus costs, disbursements and reasonable attorneys' fees incurred by KTJ 229, LLC in the Action and in this action; and
2. Awarding judgment in favor of KTJ 229, LLC and against Defendants Jeff Towner, Chris Weiss, and Todd Poss, jointly and severally, for treble damages pursuant to W.S.A. § 943.20; and
3. Awarding judgment in favor of KTJ 229, LLC and against Defendants Jeff Towner, Chris Weiss and Todd Poss, jointly and severally, for taxable costs and disbursements; and
4. Granting such other relief as the Court deems just and proper.

Dated: May 13, 2016

**MORRISON SUND PLLC**

s/ Cynthia L. Hegarty

Cynthia L. Hegarty (#0294627)

Ryan R. Dreyer (#0332252)

5125 County Road 101, Suite 200

Minnetonka, Minnesota 55345

(952) 975-0050 (phone)

(952) 975-0058 (fax)

**ATTORNEYS FOR PLAINTIFFS**

ACKNOWLEDGEMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney fees and witness fees may be awarded to the opposing party or parties pursuant to Minn. Stat. § 549.211.

s/ Cynthia L. Hegarty

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

KTJ 229,LLC,  <div style="text-align: right;">Plaintiff,</div> v.  Jeff Towner, Chris Weiss, and Todd Poss,  <div style="text-align: right;">Defendants.</div>	<div style="text-align: right;">Case Type: Other Civil</div>  <div style="text-align: right;">Court File No. _____</div>  <div style="text-align: center;"> <b>CERTIFICATE OF REPRESENTATION AND PARTIES</b>            (Minn. Gen. R. Prac. 104(a))         </div>
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Date Case Filed: \_\_\_\_\_

This Certificate must be filed pursuant to Rule 104(a) of the General Rules of Practice for the District Courts if the case is a family or a civil case listed in Minn. Gen. R. Prac. 111.01. **If information is not then known to the filing party at the time of filing, it shall be provided to the Court Administrator in writing by the filing party within seven (7) days of learning the information.** Any party impleading additional parties shall provide the same information to the Court Administrator. The Court Administrator shall, upon receipt of the completed certificate, notify all parties or their lawyers, if represented by counsel, of the date of filing the action and the file number assigned.

**ATTORNEYS FOR PLAINTIFF:****ATTORNEY FOR DEFENDANT TOWNER:**

Cynthia L. Hegarty (# 0294627)  
 Ryan R. Dreyer (# 0332252)  
**MORRISON SUND PLLC**  
 5125 County Road 101, Suite 200  
 Minnetonka, MN 55345  
 Telephone: (952) 975-0050  
 Facsimile: (952)975-0058  
 chegarty@morrisonssund.com  
 rdreyer@morrisonssund.com

Unknown

**ATTORNEY FOR DEFENDANT WEISS:****ATTORNEY FOR DEFENDANT POSS:**

Unknown

Unknown

Note: If either Plaintiff/Petitioner or Defendant/Respondent gets an attorney, the attorney's name, address, telephone number and attorney ID number must be given in writing to the Court Administrator immediately.

Dated: May 13, 2016

The undersigned acknowledge that sanctions may be awarded pursuant to MINN STAT. §549.211.

/s/ Cynthia L. Hegarty

/s/ Cynthia L. Hegarty

Cynthia L. Hegarty (#0294627)

Ryan R. Dreyer (#0332252)

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